IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 24130 of 2007(V)

PETITIONER:

M/S. MARYMATHA CONSTRUCTION CO.,
MARY MATHA SQURE, ARAKUZHA ROAD, MUVATTUPUZHA,
ERNAKULAM DISTRICT, REPRESENTED BY AUTHORIZED
SIGNATORY AND MANAGING PARTNER SHRI M.P.CHERIAN.

BY ADV. SRI.DALE P.KURIEN

RESPONDENTS:

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1. THE COMMERCIAL TAX OFFICER,
KVAT, WCT & LT, MATTANCHERRY.

2. COMMISSIONER OF COMMERCIAL TAXES,
VIKAS BHAVAN, PALAYAM, THIRUVANANTHAPURAM.

3. STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY TO GOVERNMENT,
THIRUVANANTHAPURAM.

4. COCHIN PORT TRUST,
REPRESENTED BY THE CHIEF ENGINEER, DEPARTMENT OF
CIVIL ENGINEERING, COCHIN-682 009.

5. SUPERINTENDING ENGINEER (NMDP'S OFFICE),
COCHIN PORT TRUST, COCHIN-682009.

BY ADV. SHRI.C.K.GOVINDAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 24130 of 2007

Dated, this the 8th day of August, 2007

J U D G M E N T

Dispute between the petitioner and the 4th respondent pertains to recovery of tax from contract amount and remittance of the same in petitioner's account. According to the petitioner, recovery made by the Cochin Port Trust is in excess of the limits permissible under the Act. Petitioner has also applied for compounding facility for payment of tax. I do not think that there is any need for this Court to decide the issue because the Assessing Officer, before whom petitioner is registered, has full power to summon the awarder, collect copies of contracts, verify terms of payment including sales tax reimbursement between parties and to pass orders in accordance with law consistent with statute and terms of contracts. The first respondent will ensure that the tax collection, remittance and reimbursement by the awarder is strictly under the statute. This writ petition is, accordingly, disposed of directing 1st respondent to summon the Officer concerned of Cochin Port Trust, get copies of the contracts and verify the terms of contract particularly the provision for collection and reimbursement of tax and pass orders for the fourth

respondent to recover and remit tax as fixed by the 1st respondent, within a period of one month from the date of production of a copy of this judgment by the petitioner. If awarder has remitted any amount towards tax in excess what is payable by the petitioner, 1st respondent will consider whether the recovered amount is reimbursed to them and if so, to forfeit it and if it is not reimbursed to the petitioner, the amount should be refunded to the petitioner. A detailed order should be issued by the 1st respondent and if any adverse order is issued against the petitioner, petitioner can challenge the same. Similarly, 1st respondent should pass order simultaneously on petitioner's application for compounding after considering the terms of contract.

(C.N.RAMACHANDRAN NAIR, JUDGE)

jg